

## 16A Am. Jur. 2d Constitutional Law § 329

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

### VII. Departmental Separation of Governmental Powers

#### E. Delegation of Powers

##### 2. Delegation of Legislative Authority

###### b. Particular Delegations

###### (3) Delegation to Other Governmental Departments or Agencies

## § 329. Delegation of legislative authority to executive—Executive power as to international or external affairs of United States

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2400, 2406 to 2442

In internal affairs, Congress must retain the lawmaking power given to it in the enumerated grants of the Federal Constitution and cannot abdicate its functions to the executive department.<sup>1</sup> Quite a different principle applies, however, to matters that are solely external and in which the authority of the United States is exercised as a sovereign nation in the field of international relations.<sup>2</sup> The nuances of foreign policy are more the province of the executive branch and Congress than of the Supreme Court.<sup>3</sup> In light of the changeable and explosive nature of contemporary international relations and the fact that the executive is immediately privy to information that cannot be swiftly presented to, evaluated by, and acted upon by the legislature, Congress—in giving the executive authority over matters of foreign affairs—must of necessity paint with a brush broader than it customarily wields in domestic areas; this does not mean, however, that simply because a statute deals with foreign relations, it can grant the executive a totally unrestricted freedom of choice to act in this area.<sup>4</sup>

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### Footnotes

<sup>1</sup> [§ 328.](#)

<sup>2</sup> [U.S. v. Curtiss-Wright Export Corporation](#), 299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255 (1936); [Freedom to Travel](#)

[Campaign v. Newcomb, 82 F.3d 1431 \(9th Cir. 1996\)](#) (Cuban Asset Control Regulations are not an impermissible delegation of congressional power despite a contention that the “in the national interest” standard is too broad a delegation).

<sup>3</sup> [Itel Containers Intern. Corp. v. Huddleston, 507 U.S. 60, 113 S. Ct. 1095, 122 L. Ed. 2d 421 \(1993\)](#).

<sup>4</sup> [Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 \(1965\)](#).

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### VIII. Police Power

#### B. Exercise of Police Power

##### 3. Regulation and Prohibition of Occupations and Businesses

###### a. Occupations and Businesses Subject to Control

## § 356. Regulation of occupations pursuant to police power, generally

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### West's Key Number Digest

West's Key Number Digest, [States](#) 21(2)

A state may lawfully exercise its police power to protect the public health, safety, welfare, and morals by promulgating laws and regulations that reasonably regulate occupations.<sup>1</sup> However, an overbroad statute violates substantive due process by depriving a person of a constitutionally protected interest through means which are not rationally related to a valid state objective because it sweeps unnecessarily broadly.<sup>2</sup> The right of an individual to engage in any of the common occupations of life is among the several fundamental liberties protected by the Due Process and Equal Protection Clauses of the 14th Amendment.<sup>3</sup> However, neither the federal nor any state constitution secures to any person the liberty to conduct a business so as to injure the public at large or any substantial group.<sup>4</sup> A statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to the individual's fitness or competence to practice that profession.<sup>5</sup> Before the police power of the state is used to prohibit the conduct of an individual as unprofessional, offending actions that do not fall clearly within the scope of the proscription must be explicitly defined as wrong.<sup>6</sup>

An individual who has obtained the license required to engage in a particular profession or vocation has a fundamental vested right to continue in that activity.<sup>7</sup> However, this general right to engage in a trade, profession, or business is subject to the power inherent in the state to make necessary rules and regulations governing the use and enjoyment of property necessary for the preservation of the public health, morals, comfort, order, and safety.<sup>8</sup> A regulation of this type does not deprive owners of property without due process of law.<sup>9</sup> No person can acquire a vested right to continue, when once licensed, in a business, trade, or occupation that is subject to legislative control under the police powers.<sup>10</sup> Although a license, as a species of property, may require the government to afford an appropriate process before imposing restrictions, the people, either directly or through their legislature, may alter the substantive terms of a promise not to interfere in private economic transactions.<sup>11</sup>

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Footnotes

<sup>1</sup> [Bennett v. Bureau of Professional and Occupational Affairs](#), 214 A.3d 728 (Pa. Commw. Ct. 2019).

<sup>2</sup> [Diwara v. State Board of Cosmetology](#), 852 A.2d 1279 (Pa. Commw. Ct. 2004).

<sup>3</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998). As to constitutional rights respecting the right to engage in a business or occupation, generally, see [§ 638](#).

<sup>4</sup> [§ 639](#).

<sup>5</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

<sup>6</sup> [State v. C.M.B. III Enterprises, Inc.](#), 734 N.E.2d 653 (Ind. Ct. App. 2000) (involving disciplinary sanctions on a real estate corporation and real estate brokers).

<sup>7</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

<sup>8</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

<sup>9</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998). An alleged midwife, in an action to enjoin the alleged midwife from the unlicensed practice of nursing or midwifery following a “water delivery” which resulted in the death of a newborn, was not denied her liberty and property interest in her employment as a traditional midwife; the regulation of the nursing practice contained within the Nursing and Advanced Practice Nursing Act is designed to protect the health and safety of the public. [People ex rel. Sherman v. Cryns](#), 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

<sup>10</sup> [Hughes v. Board of Architectural Examiners](#), 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

<sup>11</sup> [National Paint & Coatings Ass'n v. City of Chicago](#), 45 F.3d 1124 (7th Cir. 1995) (holding that the right to buy spray paint is not a “fundamental right” such that a statute prohibiting the sale of spray paint within the city could be considered a violation of store owners’ substantive due process interests).

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### VIII. Police Power

#### B. Exercise of Police Power

##### 3. Regulation and Prohibition of Occupations and Businesses

###### a. Occupations and Businesses Subject to Control

## § 359. Regulation of businesses affected with public interest pursuant to police power

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### West's Key Number Digest

West's Key Number Digest, [States](#) 21(2)

### A.L.R. Library

[Validity, Construction, and Application of State Statutory Provisions Prohibiting Sale of Gasoline Below Cost](#), 26 A.L.R.6th 249

### Trial Strategy

[Proof of Statutory Unfair Business Practices under State Law](#), 177 Am. Jur. Proof of Facts 3d 303

Although it is difficult to define and classify exactly what is meant or included in the phrase “business affected with a public interest,”<sup>1</sup> there is a general principle that individuals or corporations engaged in occupations in which the public has an interest or use may be regulated under the police power.<sup>2</sup> In general, the legislature may make reasonable regulations to protect the public in relations with businesses affected with a public interest.<sup>3</sup> A business may be so largely affected with a

public interest as to permit legislative regulation, even though no public trust is imposed upon the property and despite the fact that the public may not have a legal right to demand and receive service.<sup>4</sup> The concept of business “affected with a public interest” is thus not confined to industries in the nature of public utilities.<sup>5</sup>

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Footnotes

<sup>1</sup> § 360.

<sup>2</sup> *Custard Ins. Adjusters, Inc. v. Youngblood*, 686 So. 2d 211 (Ala. 1996) (holding that the statute imposing liability upon adjusters who investigate or adjust a claim for unauthorized insurers did not violate due process or equal protection based on an alleged disparity in treatment between agents and adjusters); *Holcomb v. Johnston*, 213 Ga. 249, 98 S.E.2d 561 (1957); *Steinberg-Baum & Co. v. Countryman*, 247 Iowa 923, 77 N.W.2d 15 (1956); *Dean v. City of Winona*, 843 N.W.2d 249 (Minn. Ct. App. 2014); *Hertz Drivurself Stations v. Siggins*, 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).

The subject matter of a statute which prohibits the selling of motor fuel below cost falls within the legislature’s police powers to regulate an industry of general public interest. *Ports Petroleum Co., Inc. of Ohio v. Tucker*, 323 Ark. 680, 916 S.W.2d 749 (1996).

The licensing and regulation of public service occupations are within the police power of the government. *Peppies Courtesy Cab Co. v. City of Kenosha*, 165 Wis. 2d 397, 475 N.W.2d 156 (1991).

<sup>3</sup> *LSP Transmission Holdings, LLC v. Lange*, 329 F. Supp. 3d 695 (D. Minn. 2018), aff’d, 2020 WL 1443533 (8th Cir. 2020) (electrical industry); *Sperry & Hutchinson Co. v. McBride*, 307 Mass. 408, 30 N.E.2d 269, 131 A.L.R. 1254 (1940); *State v. Spears*, 1953-NMSC-033, 57 N.M. 400, 259 P.2d 356, 39 A.L.R.2d 595 (1953); *Hertz Drivurself Stations v. Siggins*, 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).

<sup>4</sup> *Hagerman v. City of St. Louis*, 365 Mo. 403, 283 S.W.2d 623, 53 A.L.R.2d 1423 (1955).

<sup>5</sup> *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners*, 40 Cal. 2d 436, 254 P.2d 29 (1953). As to the meaning of “affected with a public interest,” see § 360.

## 16A Am. Jur. 2d Constitutional Law § 622

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### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 2. Life, Liberty, and Pursuit of Happiness

###### b. Liberty Interest in Specific Matters

## § 622. Matrimonial or family matters for purposes of liberty interest of Due Process Clause

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 1093, 1094

### A.L.R. Library

[Validity of Bigamy and Polygamy Statutes and Constitutional Provisions](#), 22 A.L.R.6th 1

[Marriage Between Persons of Same Sex—United States and Canadian Cases](#), 1 A.L.R. Fed. 2d 1

### Trial Strategy

[Validity of Marriage](#), 177 Am. Jur. Proof of Facts 3d 111

The freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights, and such relationships may take various forms, including the most intimate; the [U.S. Const. Amend. I](#) protects those relationships, including family relationships, that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs,

but also distinctively personal aspects of one's life.<sup>1</sup> Thus, freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause;<sup>2</sup> there does exist a private realm of family life which the state cannot enter.<sup>3</sup> In invalidating a state antimiscegenation statute, the Supreme Court observed that the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free people.<sup>4</sup>

In holding that the Due Process Clause of the 14th Amendment was violated by a state school board's overly restrictive rules involving mandatory maternity leave for teachers, the Supreme Court based its decision on the principle that there is a right to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.<sup>5</sup> The Supreme Court has also held unconstitutional a city housing ordinance limiting occupancy of a dwelling unit to members of a single family, which was interpreted to prohibit a grandmother from residing with her son and grandchildren, the court viewing the ordinance as violative of the freedom of personal choice in matters of family life, without justification in any important governmental interest.<sup>6</sup> Although the right of a family to determine its own living arrangements has never been accorded the status of a fundamental right, it is nonetheless recognized as constitutionally protected.<sup>7</sup> Also, a state statute making it a criminal offense for married couples to use contraceptives deprives married couples of "liberty" without due process of law.<sup>8</sup> However, an immigration statute, imposing a two-year nonresidency requirement for aliens who marry United States citizens while subject to deportation proceedings, does not violate the fundamental right of marriage or of residence of United States citizen-spouses.<sup>9</sup>

A child has a constitutionally protected due process liberty interest in a relationship with his or her parent.<sup>10</sup> Children in foster care have a substantive due process right under the 14th Amendment to protection from harm.<sup>11</sup> So long as a parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.<sup>12</sup>

Although the Supreme Court acknowledges that the relationship between a parent and child is constitutionally protected, it has held that a state could apply its "best interests of the child" standard and grant an adoption without the consent of the father, who was not married to the mother, even though the state's statutes gave both divorced parents a right to veto an adoption.<sup>13</sup> The constitutional protection is only for the termination of parent-child relationships or interference so intrusive as to be equivalent of termination.<sup>14</sup>

The fact that a father, on the advice of counsel, accepts the terms of a divorce decree requiring him to undergo psychological testing and treatment does not constitute an interference with his liberty interests.<sup>15</sup>

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#### Footnotes

<sup>1</sup> *Board of Directors of Rotary Intern. v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987). Provisions of a state's social services law, which require that parents who wish to obtain state-subsidized residential care for their children must transfer temporary custody of the children to the state, do not violate the parents' fundamental right to family integrity. *Joyner by Lowry v. Dumpson*, 712 F.2d 770 (2d Cir. 1983). The Federal Communication Commission's (FCC) antinepotism policy did not unconstitutionally burden an employee's freedom to marry when the FCC transferred the employee after her husband became head of her division since the employee was reassigned to a new division at her former grade and salary. *Cutts v. Fowler*, 692 F.2d 138 (D.C. Cir. 1982) (disapproved of on other grounds by, *Spagnola v. Mathis*, 859 F.2d 223 (D.C. Cir. 1988)).

<sup>2</sup> *Smith v. Organization of Foster Families For Equality and Reform*, 431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).

As to the constitutional dimensions of the right to obtain an abortion, see *Am. Jur. 2d, Abortion and Birth Control* §§ 3 to 87.

<sup>3</sup> *Smith v. Organization of Foster Families For Equality and Reform*, 431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).

4 Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).

5 Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974).

6 Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977).

7 Laurenzo v. Mississippi High School Activities Ass'n, Inc., 662 F.2d 1117, 1 Ed. Law Rep. 113 (5th Cir. 1981).

8 Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

9 Bright v. Parra, 919 F.2d 31 (5th Cir. 1990).

10 Lowery v. County of Riley, 522 F.3d 1086 (10th Cir. 2008); In re T.N., 180 S.W.3d 376 (Tex. App. Amarillo 2005).

11 Tylena M. v. Heartshare Children's Services, 390 F. Supp. 2d 296 (S.D. N.Y. 2005).

12 Global Travel Marketing, Inc. v. Shea, 908 So. 2d 392 (Fla. 2005).

13 Quilloin v. Walcott, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978).

14 Harry A. v. Duncan, 351 F. Supp. 2d 1060, 195 Ed. Law Rep. 206 (D. Mont. 2005), aff'd, 234 Fed. Appx. 463, 223 Ed. Law Rep. 626 (9th Cir. 2007).

15 Metzger v. Sebek, 892 S.W.2d 20 (Tex. App. Houston 1st Dist. 1994), writ denied, (Mar. 30, 1995).

## 16A Am. Jur. 2d Constitutional Law § 623

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 2. Life, Liberty, and Pursuit of Happiness

###### b. Liberty Interest in Specific Matters

## § 623. Right to travel for purposes of liberty interest of Due Process Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1280

The constitutional freedom to travel includes the freedom to enter and abide in any state in the Union.<sup>1</sup> However, the means or mode of traveling may be subjected to reasonable regulations.<sup>2</sup> While the freedom to travel within the United States has been held to be a basic right under the Federal Constitution which is independent of a specific provision therein,<sup>3</sup> the right of locomotion has also been held to be a part of the “liberty” guaranteed by the Due Process Clause.<sup>4</sup> The right to migrate protects residents of one state from being disadvantaged or from being treated differently, simply because of the timing of their migration, from other similarly situated residents. Laws which burden the right to migrate must be necessary to further a compelling state interest.<sup>5</sup> In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel when applied to residency requirements protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents.<sup>6</sup> Thus, the Supreme Court has stated that the liberty secured by the Due Process Clause of the 14th Amendment consists, in part, in the right of a person to live and work where he or she will.<sup>7</sup>

State law implicates the constitutional right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which it serves to penalize exercise of that right.<sup>8</sup>

The Supreme Court has accepted as constitutional the federal statute authorizing the incarceration of material witnesses in advance of trial.<sup>9</sup> Similarly, the Uniform Act to Secure Attendance of Out-of-State Witnesses does not violate the 14th Amendment by unduly restricting a citizen's right to ingress and egress.<sup>10</sup> Also, a state sex offender registration statute that prohibits higher-risk registered sex offenders from living within a specified distance of a school or daycare center does not infringe on a constitutional right to intrastate travel.<sup>11</sup> A bona fide residence requirement of a state statute, which is

appropriately defined and uniformly applied with respect to attendance in free public schools, does not violate the Equal Protection Clause of the 14th Amendment, and does not burden or penalize the constitutional right of interstate travel.<sup>12</sup> However, a state's restriction of its civil service preference to veterans who entered the armed forces while residing in the state violates the constitutionally protected right to travel.<sup>13</sup>

**Practice Tip:**

The “strict scrutiny” standard of constitutional review applies where the violated interest is a fundamental personal right or civil liberty, such as the right to interstate travel.<sup>14</sup>

The Supreme Court has stated that the right to travel abroad is a part of the “liberty” of which a citizen cannot be deprived without due process of law.<sup>15</sup> However, the constitutional liberty to travel abroad is subject to limitations.<sup>16</sup> Thus, freedom to travel abroad with a “letter of introduction” in the form of a passport issued by the sovereign is subordinate to national security and foreign policy considerations and is, as such, subject to reasonable governmental regulation, inasmuch as the freedom to travel outside the United States is distinguishable from the right to travel within the United States.<sup>17</sup>

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Footnotes

<sup>1</sup> [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986). The right of a United States citizen to travel from one state to another and to take up residence in the state of his or her choice is protected by the Federal Constitution. [Jones v. Helms](#), 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).

<sup>2</sup> [Benning v. State](#), 161 Vt. 472, 641 A.2d 757 (1994) (a motorcycle headgear statute does not violate a state constitutional article guaranteeing the right of enjoying and defending liberty and pursuing and obtaining safety).

<sup>3</sup> §§ 657, 658.

<sup>4</sup> [U.S. v. Laub](#), 385 U.S. 475, 87 S. Ct. 574, 17 L. Ed. 2d 526 (1967). Even though one may not have a constitutional right to be in a certain place, the government may not prohibit one from going there unless by means consonant with due process of law. [Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy](#), 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961). As to freedom of travel or movement in public vehicles or places, see § 624.

<sup>5</sup> [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

<sup>6</sup> [Zobel v. Williams](#), 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982) (holding that the retrospective aspect of Alaska's dividend distribution program, favoring established residents over new residents, was constitutionally unacceptable).

<sup>7</sup> [Jacobson v. Commonwealth of Massachusetts](#), 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); [Booth v. People of State of Illinois](#), 184 U.S. 425, 22 S. Ct. 425, 46 L. Ed. 623 (1902); [Williams v. Fears](#), 179 U.S. 270, 21 S. Ct. 128, 45 L. Ed. 186 (1900) (also stating that the right to move from one place to another according to inclination is an attribute of personal liberty).

<sup>8</sup> [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

<sup>9</sup> [Hurtado v. U.S.](#), 410 U.S. 578, 93 S. Ct. 1157, 35 L. Ed. 2d 508 (1973).

<sup>10</sup> [People of State of N. Y. v. O'Neill](#), 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).

<sup>11</sup> [Weems v. Little Rock Police Dept.](#), 453 F.3d 1010 (8th Cir. 2006).

An ordinance prohibiting convicted sex offenders from knowingly entering any public park owned, operated, or maintained by town did not violate the fundamental right to intrastate travel under the Federal and State Constitutions; the right to enter a park was not a right of function which a sex offender would depend on to carry out daily life activities, and the ordinance was rationally related to the town's interest in preventing sex crimes. [Standley v. Town of Woodfin](#), 362 N.C. 328, 661 S.E.2d 728 (2008).

<sup>12</sup> [Martinez v. Bynum](#), 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).

<sup>13</sup> [Attorney General of New York v. Soto-Lopez](#), 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

<sup>14</sup> [Cummings v. X-Ray Associates of New Mexico, P.C.](#), 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

<sup>15</sup> [Am. Jur. 2d, Passports § 13](#).

As to the right with respect to international travel, generally, see [§ 661](#).

<sup>16</sup> [Zemel v. Rusk](#), 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965) (holding that the exercise, by the Secretary of State, of his or her authority to refuse to validate passports of United States citizens for travel to Cuba is constitutionally permissible); [Karpova v. Snow](#), 402 F. Supp. 2d 459 (S.D. N.Y. 2005), aff'd, 497 F.3d 262 (2d Cir. 2007).

As to the validity of passport restrictions or requirements, generally, see [Am. Jur. 2d, Passports §§ 11 to 16](#).

<sup>17</sup> [Haig v. Agee](#), 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981) (holding that the President, by acting through the Secretary of State, has authority to revoke a passport on the ground that the holder's activities in foreign countries are causing or are likely to cause serious damage to the national security or foreign policy of the United States).

## 16A Am. Jur. 2d Constitutional Law § 624

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 2. Life, Liberty, and Pursuit of Happiness

###### b. Liberty Interest in Specific Matters

## § 624. Rights in public vehicles and places for purposes of liberty interest of Due Process Clause

[Topic Summary](#) [Correlation Table](#) [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1069

### A.L.R. Library

[Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1](#)

Under the constitutional guarantee of liberty one may, under normal conditions, move at his or her own inclination along the public highways or in public places, and while conducting himself or herself in an orderly and decent manner, neither interfering with nor disturbing another's rights, one will be protected, not only in his or her person, but in his or her safe conduct.<sup>1</sup> For example, the right of a citizen to drive on a public street with freedom from police interference, unless he or she is engaged in suspicious conduct associated in some manner with criminality, is a fundamental constitutional right.<sup>2</sup> However, the liberty of each individual in a public vehicle or public place is subject to reasonable limitations in relation to the rights of others.<sup>3</sup>

Statutes or ordinances regulating loitering,<sup>4</sup> vagrancy,<sup>5</sup> breach of the peace,<sup>6</sup> or disorderly conduct<sup>7</sup> in public places, challenged on due process grounds, have been sustained in some cases and invalidated in others, depending upon the language and scope of the provisions.<sup>8</sup> A person is free to live on the street if that person chooses to do so; a person may not

be held against her will merely to improve her standard of living or because society may find it uncomfortable to see such people on the street.<sup>9</sup> Curfew ordinances affecting juveniles and children have been held constitutional in some cases,<sup>10</sup> although there is much authority to the contrary, and there is an increasing tendency to hold them unconstitutional.<sup>11</sup>

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Footnotes

<sup>1</sup> [Pinkerton v. Verberg](#), 78 Mich. 573, 44 N.W. 579 (1889); [City of St. Louis v. Gloner](#), 210 Mo. 502, 109 S.W. 30 (1908) (loitering on the street).

<sup>2</sup> [People v. Horton](#), 14 Cal. App. 3d 930, 92 Cal. Rptr. 666 (5th Dist. 1971).

<sup>3</sup> [Public Utilities Commission of District of Columbia v. Pollak](#), 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

<sup>4</sup> [Bullock v. City of Dallas](#), 248 Ga. 164, 281 S.E.2d 613 (1981).

As to regulations regarding loitering, generally, see [Am. Jur. 2d](#), Highways, Streets, and Bridges § 197.

As to statutes regulating loitering, generally, see [Am. Jur. 2d](#), Vagrancy and Related Offenses §§ 3 to 11.

<sup>5</sup> [Am. Jur. 2d](#), Vagrancy and Related Offenses § 2.

<sup>6</sup> [Am. Jur. 2d](#), Breach of Peace and Disorderly Conduct § 14.

<sup>7</sup> [Am. Jur. 2d](#), Breach of Peace and Disorderly Conduct §§ 33, 34.

<sup>8</sup> [State ex rel. De Concini v. Gatewood](#), 10 Ariz. App. 274, 458 P.2d 368 (1969); [Walker v. District of Columbia](#), 196 A.2d 92 (D.C. 1963); [People v. Merolla](#), 9 N.Y.2d 62, 211 N.Y.S.2d 155, 172 N.E.2d 541 (1961).

<sup>9</sup> [Abney v. U. S.](#), 451 A.2d 78 (D.C. 1982); [In re Long](#), 237 Ill. App. 3d 105, 180 Ill. Dec. 182, 606 N.E.2d 1259 (2d Dist. 1992).

However, an ordinance prohibiting sleeping outdoors in a public place or in a motor vehicle parked in a public place is not facially overbroad, as the ordinance does not reach a substantial amount of constitutionally protected conduct. [Whiting v. Town of Westerly](#), 743 F. Supp. 97 (D.R.I. 1990), aff'd, 942 F.2d 18 (1st Cir. 1991).

<sup>10</sup> [People in Interest of J.M.](#), 768 P.2d 219 (Colo. 1989); [City of Milwaukee v. K.F.](#), 145 Wis. 2d 24, 426 N.W.2d 329 (1988).

<sup>11</sup> [McCollester v. City of Keene](#), 586 F. Supp. 1381 (D.N.H. 1984); [K.L.J. v. State](#), 581 So. 2d 920 (Fla. 1st DCA 1991); [City of Maquoketa v. Russell](#), 484 N.W.2d 179 (Iowa 1992); [Allen v. City of Bordentown](#), 216 N.J. Super. 557, 524 A.2d 478 (Law Div. 1987).

As to municipal curfew laws, generally, see [Am. Jur. 2d](#), Municipal Corporations, Counties, and Other Political Subdivisions § 416.

## 16B Am. Jur. 2d Constitutional Law § 632

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 3. Property

###### a. Meaning and Import of Property and Property Rights

## § 632. What is property in context of constitutionally guaranteed property rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109, 1110

The word “property” in the 14th Amendment embraces all valuable interests which a person may possess outside of himself or herself—outside of life and liberty.<sup>1</sup> It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution protects these essential attributes.<sup>2</sup> The right of property has been also defined as the right to acquire, possess, and enjoy particular things and objects in any way consistent with the equal rights of others and the just exactions and demands of the state.<sup>3</sup>

In applying the Due Process Clause, different kinds of property are not distinguished.<sup>4</sup> Property interests subject to procedural due process protection are not limited by a few rigid, technical forms; rather, “property” denotes a broad range of interests that are secured by existing rules or understandings.<sup>5</sup> In order to constitute a property right for purposes of due process, one must have a current valid expectation, based on the government’s implied promise to continue this entitlement, in an important, personal, monetizable interest.<sup>6</sup>

### Observation:

The definition of property may turn on a question of state law, but if the property interest is found to exist, the question of what process is due is a matter of federal law.<sup>7</sup>

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Footnotes

<sup>1</sup> [Campbell v. Holt](#), 115 U.S. 620, 6 S. Ct. 209, 29 L. Ed. 483 (1885).

<sup>2</sup> [Terrace v. Thompson](#), 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 (1923); [Great Lakes Higher Educ. Corp. v. Cavazos](#), 911 F.2d 10, 62 Ed. Law Rep. 434 (7th Cir. 1990); [Gaulden v. Kirk](#), 47 So. 2d 567 (Fla. 1950); [State St. Furniture Co. v. Armour & Co.](#), 345 Ill. 160, 177 N.E. 702, 76 A.L.R. 1298 (1931); [Fitzhugh v. City of Jackson](#), 132 Miss. 585, 97 So. 190, 33 A.L.R. 279 (1923).

For a complete discussion of the particular rights encompassed within the right to property, see §§ [629](#) to [639](#).

<sup>3</sup> [BAC, Inc. v. Board of Sup'rs of Millcreek Tp.](#), 534 Pa. 381, 633 A.2d 144 (1993).

<sup>4</sup> [North Georgia Finishing, Inc. v. Di-Chem, Inc.](#), 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).

<sup>5</sup> [Gotkin v. Miller](#), 514 F.2d 125 (2d Cir. 1975).

<sup>6</sup> [Cervoni v. Secretary of Health, Ed. and Welfare](#), 581 F.2d 1010 (1st Cir. 1978); [White Plains Towing Corp. v. Patterson](#), 991 F.2d 1049 (2d Cir. 1993).

<sup>7</sup> [Kovats v. Rutgers](#), 749 F.2d 1041, 21 Ed. Law Rep. 801 (3d Cir. 1984).

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## 16B Am. Jur. 2d Constitutional Law § 633

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### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 3. Property

###### a. Meaning and Import of Property and Property Rights

## § 633. Types of property in context of constitutionally guaranteed property rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109

### A.L.R. Library

[Recovery by writer, artist, or entertainer for loss of publicity or reputation resulting from breach of contract, 96 A.L.R.3d 437](#)

The types of property rights which are protected by the guarantee of due process are varied and may take many forms.<sup>1</sup> The guarantee refers to the right to acquire and possess the absolute and unqualified title to every species of property recognized by law with all the rights incidental thereto.<sup>2</sup> It relates not only to those tangible things of which one may be the owner but to everything which he or she may have of an exchangeable value.<sup>3</sup> The 14th Amendment's protection of "property" does not only safeguard the rights of undisputed ownership but also extends protection to any significant property interest, including statutory entitlements.<sup>4</sup> No question of real<sup>5</sup> and personal<sup>6</sup> property. However, the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money,<sup>7</sup> and it is when the question arises with respect to the less tangible forms of property that an inquiry as to what is property must be made.<sup>8</sup>

To constitute a violation of the provision against depriving any person of his or her property without due process of law, it should appear that such person has a property interest in the particular thing of which he or she is alleged to have been deprived.<sup>9</sup> It is only a vested right which cannot be taken away except by due process of law.<sup>10</sup> To have a property interest in a

benefit protected by procedural due process, a person must have more than an abstract need or desire for it, and he or she must have more than a unilateral expectation of it; in short, he or she must have a legitimate claim of entitlement to it.<sup>11</sup> Procedural requirements ordinarily do not transform a unilateral expectation into a protected due process property interest in a government benefit; only if procedural requirements amount to a significant substantive restriction on decision-making do they give rise to a protected property interest.<sup>12</sup>

**Observation:**

Just as a state may create a property interest that is entitled to constitutional protection, the state has power to condition a permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain interest.<sup>13</sup>

It has been held, though there is also some authority to the contrary, that a public office is not property within the meaning of the federal constitutional provision against deprivation of property without due process of law.<sup>14</sup> However, reputation alone, apart from some more tangible interests such as employment, is not “property” by itself sufficient to invoke the procedural protection of the Due Process Clause.<sup>15</sup> Likewise, there are certain things which a person may own but in which there are no property rights recognized by the Constitution.<sup>16</sup> The constitutional protection of property rights is not to be unduly extended to tenuous interests that may vanish even without legal interference.<sup>17</sup>

Certain privileges as to which a qualified right of property may be recognized are inherently subject to legislative regulation and no such vested right in them exists as will prevent the legislature from withdrawing such privileges from those who previously enjoyed them.<sup>18</sup> Licenses and permits generally are not considered property in any constitutional sense.<sup>19</sup> Accordingly, the revocation of such qualified rights does not amount to a deprivation of property without due process of law.<sup>20</sup> The separate character of property acquired during marriage by gift, devise, or descent is constitutional in nature, however.<sup>21</sup> Generalized environmental concerns do not constitute property or liberty interests requiring the protection of the Due Process Clause.<sup>22</sup> However, statutory entitlement to receipt of an educational assistance allowance under a federal statute does constitute a “property right” protected by the Due Process Clause.<sup>23</sup> The right of a creditor to collect a garnishment is “a significant property interest” protected by the Due Process Clause of the 14th Amendment.<sup>24</sup> Likewise, the right to practice law is a valuable property right which can be denied only by due process of law.<sup>25</sup>

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Footnotes

<sup>1</sup> *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

<sup>2</sup> *Ex parte Quarg*, 149 Cal. 79, 84 P. 766 (1906); *Herlihy v. Donohue*, 52 Mont. 601, 161 P. 164 (1916); *Hall v. State*, 100 Neb. 84, 158 N.W. 362 (1916).

<sup>3</sup> *Board of Education of Normal School Dist. v. Blodgett*, 155 Ill. 441, 40 N.E. 1025 (1895); *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 53 S.W. 955 (1899), aff'd, 183 U.S. 13, 22 S. Ct. 1, 46 L. Ed. 55 (1901).  
A bank account is a form of property for purposes of the Due Process Clause of the U.S. Const. Amend. XIV. *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).

<sup>4</sup> *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).

<sup>5</sup> *Mott v. U.S.*, 283 U.S. 747, 51 S. Ct. 642, 75 L. Ed. 1385 (1931); *Jacobsen v. Superior Court of Sonoma County, Department No. 2*, 192 Cal. 319, 219 P. 986, 29 A.L.R. 1399 (1923); *Murrison v. Fenstermacher*, 166 Kan. 568, 203 P.2d 160, 7 A.L.R.2d 1360 (1949); *Todd v. Board of Educational Lands and Funds of Neb.*, 154 Neb. 606, 48 N.W.2d 706 (1951).

6       Lynch v. U.S., 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934); Frost v. Corporation Commission, 278 U.S. 515, 49 S. Ct. 235, 73 L. Ed. 483 (1929); Superior Water, Light & Power Co. v. City of Superior, 263 U.S. 125, 44 S. Ct. 82, 68 L. Ed. 204 (1923); Security-First Nat Bank of Los Angeles v. Rindle Land & Navigation Co, 85 F.2d 557, 107 A.L.R. 1240 (C.C.A. 9th Cir. 1936).

As to a vested right of action as property, see § 738.

As to judgments and rights acquired thereby as property, see § 645.

7       Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953).

8       Kenner v. Kenner, 139 Tenn. 211, 201 S.W. 779 (1918) (the right of custody of a child, aside from the child's ability or inability to perform services, has been held not to be a right of property).

The expectation of a veteran that he would be furnished domiciliary care and vocational training benefits at specific VA facilities did not constitute a "property" interest, so that he could be relocated without a hearing. *Moore v. Johnson*, 582 F.2d 1228 (9th Cir. 1978).

9       City of New Orleans v. New Orleans Waterworks Co., 142 U.S. 79, 12 S. Ct. 142, 35 L. Ed. 943 (1891); City of Birmingham v. Graffeo, 551 So. 2d 357 (Ala. 1989) (a city council seat is not property); *McCarter v. Hudson County Water Co.*, 70 N.J. Eq. 695, 65 A. 489 (Ct. Err. & App. 1906).

10      Merritt v. Ash Grove Lime & Portland Cement Co., 136 Neb. 52, 285 N.W. 97 (1939); *Crump v. Guyer*, 1916 OK 254, 60 Okla. 222, 157 P. 321, 2 A.L.R. 331 (1916).

The word "property" as used in the Due Process Clause refers to vested rights, and there is no reference to mere concessions or privileges which may be bestowed or withheld at will. *Senior Citizens League v. Department of Social Sec. of Wash.*, 38 Wash. 2d 142, 228 P.2d 478 (1951).

11      Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Santos v. City of Fall River*, 942 F. Supp. 2d 178 (D. Mass. 2013); *Gonzales v. City of Albuquerque*, 849 F. Supp. 2d 1123 (D.N.M. 2011), aff'd, 701 F.3d 1267 (10th Cir. 2012).

12      *Burch v. Smathers*, 990 F. Supp. 2d 1063 (D. Idaho 2014).

13      *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).

14      Am. Jur. 2d, Public Officers and Employees § 13.

15      *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).

16      *Burke, on Behalf and for Benefit of Local Cincinnati of Communist Labor Party v. American Legion of Ohio*, Robert E. Bentley Post, No. 50, 14 Ohio App. 243, 1921 WL 1301 (1st Dist. Hamilton County 1921).

17      *Addiss v. Selig*, 147 Misc. 731, 264 N.Y.S. 816 (Sup 1933), aff'd, 240 A.D. 829, 266 N.Y.S. 1008 (1st Dep't 1933), rev'd on other grounds, 264 N.Y. 274, 190 N.E. 490, 92 A.L.R. 1384 (1934).

18      *District of Columbia v. R.P. Andrews Paper Co.*, 256 U.S. 582, 41 S. Ct. 545, 65 L. Ed. 1103 (1921); *Doyle v. Kahl*, 242 Iowa 153, 46 N.W.2d 52 (1951).

19      Am. Jur. 2d, Licenses and Permits § 2.

20      *State v. Durein*, 70 Kan. 1, 78 P. 152 (1904), on reh'g, 70 Kan. 13, 80 P. 987 (1905) and aff'd, 208 U.S. 613, 28 S. Ct. 567, 52 L. Ed. 645 (1908).

21      *Walton v. Johnson*, 879 S.W.2d 942 (Tex. App. Tyler 1994), writ denied, (Nov. 17, 1994).

Testators have a constitutional right to be free from unreasonable legislative restraint upon their right to devise property. *Buskey v. Town of Hanover*, 133 N.H. 318, 577 A.2d 406 (1990).

22      *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 67 A.L.R. Fed. 1 (D.C. Cir. 1981).

23      *Devine v. Cleland*, 616 F.2d 1080 (9th Cir. 1980).

<sup>24</sup> Cottrell v. Public Finance Corp., 163 W. Va. 310, 256 S.E.2d 575 (1979).

<sup>25</sup> Reese v. Board of Com'rs of Alabama State Bar, 379 So. 2d 564 (Ala. 1980).

As to due process requirements of attorney disciplinary proceedings, see [Am. Jur. 2d, Attorneys at Law § 105](#).

## 16B Am. Jur. 2d Constitutional Law § 634

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### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 3. Property

###### a. Meaning and Import of Property and Property Rights

## § 634. Particular property rights in context of constitutionally guaranteed property rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109 to 1111

An owner cannot be deprived of any of the essential attributes which belong to the right of property.<sup>1</sup> Included within the right of property which is constitutionally protected are the rights to acquire,<sup>2</sup> possess,<sup>3</sup> hold, enjoy,<sup>4</sup> use,<sup>5</sup> manage,<sup>6</sup> insure,<sup>7</sup> defend and protect,<sup>8</sup> and improve<sup>9</sup> property, and the right to devote property to any legitimate use.<sup>10</sup> Indeed, the substantial value of property lies in its use; if the right of use is denied, the value of the property is annihilated and ownership is rendered a barren right.<sup>11</sup> The constitutional right to acquire, possess, and protect property is not limited to any particular amount of property.<sup>12</sup>

A very important incident of the right of property is the right to dispose of it.<sup>13</sup> The right to buy, sell, barter, and exchange property is a necessary incident to its ownership and, subject to reasonable regulation, is as much protected by the constitution as is the ownership itself;<sup>14</sup> similarly protected is the right to enter into contracts in relation to property.<sup>15</sup> However, the right to will or inherit property usually has been held not to be a constitutionally protected property right.<sup>16</sup>

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### Footnotes

<sup>1</sup> [Coffeyville Vitrified Brick & Tile Co. v. Perry](#), 69 Kan. 297, 76 P. 848 (1904); [Wright v. Hart](#), 182 N.Y. 330, 75 N.E. 404 (1905) (overruled in part on other grounds by, [Klein v. Maravelas](#), 219 N.Y. 383, 114 N.E. 809 (1916)).

<sup>2</sup> [Cap F. Bourland Ice Co. v. Franklin Utilities Co.](#), 180 Ark. 770, 22 S.W.2d 993, 68 A.L.R. 1018 (1929); [State v. City](#)

of Stuart, 97 Fla. 69, 120 So. 335, 64 A.L.R. 1307 (1929); Scottish American Mortg. Co. v. Minidoka County, 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223 (Iowa 2018); Kenton & Campbell Benev. Burial Ass'n v. Goodpaster, 304 Ky. 233, 200 S.W.2d 120 (1946); Malone v. City of Omaha, 294 Neb. 516, 883 N.W.2d 320 (2016); Loundsbury v. City of Keene, 122 N.H. 1006, 453 A.2d 1278 (1982); Appeal of Perrin, 305 Pa. 42, 156 A. 305, 79 A.L.R. 912 (1931).

<sup>3</sup> Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, 484 F.2d 200 (9th Cir. 1973); Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223 (Iowa 2018); Loundsbury v. City of Keene, 122 N.H. 1006, 453 A.2d 1278 (1982).

<sup>4</sup> Sterling v. Constantin, 287 U.S. 378, 53 S. Ct. 190, 77 L. Ed. 375 (1932); Honomichl v. Valley View Swine, LLC, 914 N.W.2d 223 (Iowa 2018); Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015); Grondin v. Town of Hinsdale, 122 N.H. 882, 451 A.2d 1299 (1982); City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953); Township of Exeter v. Zoning Hearing Bd. of Exeter Tp., 599 Pa. 568, 962 A.2d 653 (2009).

<sup>5</sup> Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015).

<sup>6</sup> Schafer v. Haller, 108 Ohio St. 322, 1 Ohio L. Abs. 485, 140 N.E. 517, 30 A.L.R. 1378 (1923).

<sup>7</sup> Kusnetzky v. Security Ins. Co., 313 Mo. 143, 281 S.W. 47, 45 A.L.R. 189 (1926).

<sup>8</sup> Kentucky Fried Chicken of Cal., Inc. v. Superior Court, 14 Cal. 4th 814, 59 Cal. Rptr. 2d 756, 927 P.2d 1260 (1997); Loundsbury v. City of Keene, 122 N.H. 1006, 453 A.2d 1278 (1982); State v. Webber, 85 Or. App. 347, 736 P.2d 220 (1987); Sammons v. American Auto. Ass'n, 912 P.2d 1103 (Wyo. 1996).

<sup>9</sup> White Bros. & Crum Co. v. Watson, 64 Wash. 666, 117 P. 497 (1911).

<sup>10</sup> State of Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210, 86 A.L.R. 654 (1928); Terrace v. Thompson, 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 (1923); City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953).

<sup>11</sup> City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953).

<sup>12</sup> Hamilton v. Williams, 145 Fla. 697, 200 So. 80 (1941).

<sup>13</sup> Terrace v. Thompson, 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 (1923); Malone v. City of Omaha, 294 Neb. 516, 883 N.W.2d 320 (2016) (right to sell); National City Bank of New York v. Del Sordo, 16 N.J. 530, 109 A.2d 631 (1954); City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953).

<sup>14</sup> **Metropolitan Trust Co. v. Jones**, 384 Ill. 248, 51 N.E.2d 256, 149 A.L.R. 1416 (1943).

An individual's right to dispose of private property is subject to reasonable statutory restrictions and the reasonable exercise of the police power. **Lakeside Imports, Inc. v. State**, 639 So. 2d 253 (La. 1994).

<sup>15</sup> § 640.

<sup>16</sup> Am. Jur. 2d, Wills § 48.

## 16B Am. Jur. 2d Constitutional Law § 635

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### Constitutional Law

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### IX. Fundamental Constitutional Rights and Privileges

#### C. Particular Fundamental Constitutional Rights

##### 3. Property

###### a. Meaning and Import of Property and Property Rights

## § 635. What is a deprivation of constitutionally guaranteed property rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1109 to 1111

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[Validity and construction of law regulating conversion of rental housing to condominiums, 21 A.L.R.4th 1083](#)

Both state and Federal Constitutions preclude the government from asserting summary authority over the property of persons, and any deprivation of property must be accomplished in accordance with due process of law.<sup>1</sup> Although the United States Constitution does not contain any definition of the word “deprive” as used in the 14th Amendment, because the constitutionally protected right of property is not unlimited,<sup>2</sup> it follows as a matter of fundamental logic that not every regulation of the right<sup>3</sup> and not every act affecting the right<sup>4</sup> amounts to a deprivation. The failure to give notice when none is required by constitution or statute is not, normally, a denial of due process, nor is it the deprivation of any of the bundle of rights incident to the ownership of private property.<sup>5</sup> The retroactive application of a social security benefit change which reduces benefits for retirees who earn both covered and noncovered wages does not constitute an unconstitutional deprivation of property.<sup>6</sup> Burdens and expenses may within reasonable and constitutional limits be imposed on property,<sup>7</sup> and emergency invasions or limitations of the use of property have been sustained.<sup>8</sup> However, the concept of “confiscation” of private property is at odds with the Due Process Clause of the Fifth Amendment.<sup>9</sup> Property rights are unwarrantedly infringed by requiring them to yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communications exist because such accommodation diminishes property rights without significantly enhancing the asserted

right of free speech.<sup>10</sup> Thus, a law is considered as being a deprivation of property within the meaning of this constitutional guarantee if it deprives an owner of one of its essential attributes;<sup>11</sup> destroys or impairs its value;<sup>12</sup> restricts or interrupts its common, necessary, or profitable use;<sup>13</sup> hampers the owner in the application of it to the purposes of trade; or imposes conditions upon the right to hold or use it and thereby seriously impairs its value.<sup>14</sup> The imposition of unreasonable conditions upon the use of property is an unconstitutional deprivation because it deprives the owner of his or her property, even without any actual taking.<sup>15</sup> Any significant taking of property by the state is within the purview of the Due Process Clause of the 14th Amendment;<sup>16</sup> as long as a property deprivation is not de minimis, its gravity is irrelevant to the question whether account must be taken of the Due Process Clause.<sup>17</sup>

The duration of any potentially wrongful deprivation of a property interest under a state's procedures is an important factor in assessing the impact of official action on the private interest involved for purposes of determining the process due under the Due Process Clause of the 14th Amendment,<sup>18</sup> but it is not decisive of the basic right to a prior hearing of some kind.<sup>19</sup> A temporary, nonfinal deprivation of property is a "deprivation" in the terms of the 14th Amendment.<sup>20</sup>

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#### Footnotes

<sup>1</sup> [People v. Braden](#), 243 Ill. App. 3d 671, 183 Ill. Dec. 312, 611 N.E.2d 575 (2d Dist. 1993).

<sup>2</sup> § 630.

<sup>3</sup> [Garelick v. Sullivan](#), 987 F.2d 913 (2d Cir. 1993); [Taunton Greyhound Ass'n, Inc. v. Town of Dighton](#), 373 Mass. 60, 364 N.E.2d 1234 (1977); [City of Kansas City v. Hertz Corp.](#), 499 S.W.2d 449 (Mo. 1973); [Nolden v. East Cleveland City Commission](#), 12 Ohio Misc. 205, 41 Ohio Op. 2d 291, 232 N.E.2d 421 (C.P. 1966).

A county ordinance prohibiting residents from keeping more than four roosters on a property without a permit was a valid exercise of the county's police power and did not violate the residents' right to possess property; the ordinance did not deprive residents of the right to own property, but rather regulated their use of it. [Perez v. County of Monterey](#), 32 Cal. App. 5th 257, 243 Cal. Rptr. 3d 683 (6th Dist. 2019).

<sup>4</sup> [U.S. v. James Daniel Good Real Property](#), 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993); [N.L.R.B. v. Stowe Spinning Co.](#), 336 U.S. 226, 69 S. Ct. 541, 93 L. Ed. 638 (1949); [McAndrews v. Fleet Bank of Massachusetts, N.A.](#), 989 F.2d 13 (1st Cir. 1993); [L.M. Everhart Const., Inc. v. Jefferson County Planning Com'n](#), 2 F.3d 48 (4th Cir. 1993); [Chacon v. Granata](#), 515 F.2d 922 (5th Cir. 1975); [Thrasher v. Barrick](#), 986 F.2d 1246, 1 A.D.D. 737 (8th Cir. 1993); [Housing Authority of City of Fort Collins v. U.S.](#), 980 F.2d 624 (10th Cir. 1992); [Blankman v. County of Nassau](#), 819 F. Supp. 198 (E.D. N.Y. 1993), aff'd, 14 F.3d 592 (2d Cir. 1993); [State v. Lewis](#), 406 A.2d 886 (Me. 1979).

A motel owner-operator is not deprived of property under the U.S. Const. Amend. V by the loss of his "right" to select his guests free from governmental regulation by the Civil Rights Act of 1964, which forbids discrimination or segregation on the grounds of race, color, religion, or national origin in certain places of public accommodation affecting commerce. [Heart of Atlanta Motel, Inc. v. U. S.](#), 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964).

<sup>5</sup> [Evans v. Burruss](#), 401 Md. 586, 933 A.2d 872 (2007).

<sup>6</sup> [Fernandez v. Barnhart](#), 200 Fed. Appx. 325 (5th Cir. 2006).

<sup>7</sup> § 388.

<sup>8</sup> [Block v. Hirsh](#), 256 U.S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A.L.R. 165 (1921).

<sup>9</sup> [Zschernig v. Miller](#), 389 U.S. 429, 88 S. Ct. 664, 19 L. Ed. 2d 683 (1968).

The Federal Constitution protects against the confiscation of private property or the income therefrom. [Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).

<sup>10</sup> [Lloyd Corp., Limited v. Tanner](#), 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).

<sup>11</sup> [Indian Refining Co. v. Ambrav River Drainage Dist.](#), 1 F. Supp. 937 (E.D. Ill. 1932); [Capital Gas & Electric Co. v. Boynton](#), 137 Kan. 717, 22 P.2d 958 (1933); [State v. Johnson](#), 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970);

Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 (1934); Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930); Inman v. Sandvig, 170 Wash. 112, 15 P.2d 696 (1932).

<sup>12</sup> State v. Johnson, 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970); Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 (1934); Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930); Inman v. Sandvig, 170 Wash. 112, 15 P.2d 696 (1932).

<sup>13</sup> C. F. Lytle Co. v. Clark, 491 F.2d 834 (10th Cir. 1974); State v. Johnson, 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970).

The rezoning of buildable private parks exclusively as parks open to the public, through the device of floating development rights severed from real property and made transferable to another section of mid-Manhattan, constituted a deprivation of property rights without due process of law. *Fred F. French Investing Co., Inc. v. City of New York*, 39 N.Y.2d 587, 385 N.Y.S.2d 5, 350 N.E.2d 381 (1976).

<sup>14</sup> *East Coast Lumber Terminal v. Town of Babylon*, 174 F.2d 106, 8 A.L.R.2d 1219 (2d Cir. 1949); State v. Johnson, 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970); Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930); Inman v. Sandvig, 170 Wash. 112, 15 P.2d 696 (1932).

<sup>15</sup> *East Coast Lumber Terminal v. Town of Babylon*, 174 F.2d 106, 8 A.L.R.2d 1219 (2d Cir. 1949).

<sup>16</sup> *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975); *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).

<sup>17</sup> *Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977); *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

<sup>18</sup> *Mackey v. Montrym*, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979).

<sup>19</sup> *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).

<sup>20</sup> *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972); *City of Norwood v. Sheen*, 126 Ohio St. 482, 186 N.E. 102, 87 A.L.R. 1375 (1933); *State ex rel. Payne v. Walden*, 156 W. Va. 60, 190 S.E.2d 770 (1972).